

Office of the Attorney General
Washington, D. C. 20530

REPORTING OF FEDERAL CRIMES COMMITTED
BY OFFICERS OR EMPLOYEES OF AGENCIES
IN THE INTELLIGENCE COMMUNITY

Executive Order 12036, § 1-706, requires senior officials of the intelligence community to:

Report to the Attorney General evidence of possible violations of federal criminal law by an employee of their department or agency . . .

These procedures govern the reporting of possible federal crimes committed by officers or employees of the intelligence agencies. They are promulgated under the authority of 28 U.S.C. § 535 and E.O. 12036, §§ 1-706, 3-305. Except to the extent indicated in paragraph G, infra, they supersede all previous agreements or guidelines.

A. Definitions

1. "Officer or employee" shall mean:

- a. All persons defined as employees in E.O. 12036, § 4-204;
- b. former officers or employees when the offense was committed during their employment; and
- c. former officers or employees when a basis for referral exists with respect to violation of 18 U.S.C. § 207.

DOJ Review Completed

2. "Agency" shall mean:

- a. The Central Intelligence Agency;
- b. the National Security Agency;
- c. the Defense Intelligence Agency;
- d. offices within the Department of Defense for the collection of specialized foreign intelligence through reconnaissance programs;
- e. the intelligence elements of the military services, including the Army Intelligence and Security Command (INSCOM), the Counter-intelligence Directorate of the Air Force Office of Special Investigations, and the Internal Security Division of the Naval Investigative Service;
- f. the Bureau of Intelligence and Research of the Department of State;
- g. the Intelligence elements of the Federal Bureau of Investigation; and
- h. the staff elements of the Office of the Director of Central Intelligence.

3. "Basis for referral" shall mean allegations, complaints, or information tending to show that any officer or employee may have violated a federal criminal statute that the agency cannot establish as unfounded within a reasonable time through a preliminary inquiry.

B. Determining Basis for Referral

1. When an agency has received allegations, complaints, or information tending to show that any officer or employee may have violated a Federal criminal statute, it shall determine whether a basis for referral exists.

2. In determining a basis for referral, an agency will not attempt to establish that all elements of the possible violation have occurred or that a particular employee is responsible before referring the matter to the Department of Justice.

3. When the allegations, complaints, or information received are not sufficient to determine whether a basis for referral exists, an agency shall conduct a preliminary inquiry, limited to the following methods:

- a. Interviews with current employees;
- b. Examination of the records of the agency;
- c. Examination of the records of other agencies;
- d. Examination of premises occupied by the agency not constituting a physical search, physical surveillance, or electronic surveillance; or

e. Under procedures approved by the Attorney General and in conformity with other legal requirements, physical search, electronic surveillance, or physical surveillance of officers and employees of the agency on premises occupied by the agency.

A preliminary inquiry shall not include interviews with persons who are not current employees of the agency or examination of premises not occupied by the agency, except that the agency may interview a non-employee for the sole purpose of determining the truth of a report that such non-employee has made an allegation or complaint against an agency employee.

C. Referral to the Department of Justice

Referrals shall be made in the following manner:

1. (a) In cases where no public disclosure of classified information or intelligence sources and methods would result from further investigation or prosecution, and the security of ongoing intelligence operations would not be jeopardized thereby, the agency will report the matter to the cognizant office of the Federal Bureau of Investigation, other appropriate Federal investigative agency, or to the appropriate United States Attorney or his designee for an investigative or prosecutive determination. Cases involving bribery or conflict of interest will be reported to the Criminal Division.

(b) A record of such referrals and any subsequent

agency action to dispose of the matter shall be maintained by the agency, and on a quarterly basis, a summary memorandum indicating the type of crime, place and date of referral and ultimate disposition will be forwarded to the Assistant Attorney General, Criminal Division, or his designee. Referrals made by covert facilities to the United States Attorneys, the FBI or other Federal investigative agencies will also be included in the quarterly report with due regard for protection of the security of said installations.

2. In cases where preliminary investigation has failed to develop an identifiable suspect and the agency believes that investigation or prosecution would result in public disclosure of classified information or intelligence sources or methods or would jeopardize the security of ongoing intelligence operations, the Criminal Division will be so informed in writing, following which a determination will be made as to the proper course of action to be pursued in consultation with the agency and the FBI.

3. (a) In cases where preliminary investigation has determined that there is a basis for referral of a matter involving an identifiable agency officer or employee to the Department of Justice, the future investigation or prosecution of which would result in the public disclosure of classified information or intelligence sources or methods or would jeopardize the security of

ongoing intelligence operations, a letter explaining the facts of the matter in detail will be forwarded to the Criminal Division. The agency will also forward to the Criminal Division a separate classified memorandum explaining the security or operational problems which would arise from a criminal investigation or prosecution, including, but not limited to:

(1) Public disclosure of information needed to prove the offense or to obtain a search warrant or an electronic surveillance order under chapter 119 of Title 18, United States Code;

(2) Disclosure required by a defense request for discovery of information under Rule 16 of the Federal Rules of Criminal Procedure, 18 U.S.C. § 3500, or Brady v. Maryland, 373 U.S. 83 (1963); and

(3) Interference with the voluntary provision of cover or other services necessary for intelligence operations by persons other than employees.

(b) In reporting such matter, the agency shall inform the Criminal Division of the steps it has taken to prevent a recurrence of similar offenses, if such action is feasible, as well as those administrative

sanctions which may be contemplated with respect to the prospective criminal defendant.

(c) The Criminal Division, after any necessary consultation with the agency and the FBI, will make a prosecutive determination, informing the agency in writing of such determination.

4. Officers or employees who are the subject of such referrals to any component of the Department of Justice may be identified as John Doe #_____ in any written document associated with the initial referral. The true identities of such persons will be made available when the Department determines that they are essential to any subsequent investigation or prosecution of the matter referred.

D. Further Action by Agencies

If, as a result of the preliminary inquiry, the agency desires to conduct a more extensive investigation for administrative or security reasons, it will inform the Department of Justice component to which the matter is referred. The agency may take appropriate administrative, disciplinary, or other adverse action at any time against any officer or employee whose activities are reported under these procedures. However, internal agency investigations and disciplinary action in referred matters will be coordinated with the appropriate investigative or prosecuting officials to avoid prejudice to any criminal investigation or prosecution.

E. Format of Referrals

All referrals required by these procedures shall be in writing and in such detail as the Department of Justice component receiving the referral shall determine.

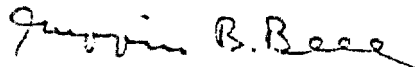
F. Direct Reports to the Attorney General

When the head of an agency within the intelligence community believes that circumstances of security warrant it, he may directly report to the Attorney General in writing any matter required to be referred by these procedures, in lieu of following the reporting procedures of paragraphs C-E, supra.

G. Relation to Other Procedures and Agreements

1. Notwithstanding the November 25, 1955 Memorandum of Understanding between the Department of Defense and the Department of Justice, notice of crimes committed by an officer or employee which violate both federal criminal statutes and the Uniform Code of Military Justice shall be given to the Department of Justice as provided herein. Thereafter, the investigation and prosecution of individuals subject to the Uniform Code of Military Justice shall be conducted as provided by the 1955 Memorandum of Understanding.

2. These procedures do not affect the reporting of possible offenses by regular, permanent FBI employees to the Office of Professional Responsibility, Department of Justice.
3. Nothing in these procedures shall be construed to restrict the exchange of information between agencies in the intelligence community required by other procedures or agreements made under E.O. 12036.


Griffin B. Bell
Attorney General

Dated: 8/5/79